



Federal Communications Commission
Washington, D.C. 20554

July 20, 2005

DA 05-2047

Ms. Jill Canfield
Ms. L. Marie Guillory
National Telecommunications Cooperative Association
4121 Wilson Boulevard, Suite 1000
Arlington, VA 22203

Dear Ms. Canfield and Ms. Guillory:

Thank you for the comments filed by the National Telecommunications Cooperative Association ("NTCA") on November 8, 2002, regarding the possible revision or elimination of rules under the Regulatory Flexibility Act, 5 U.S.C. § 610.¹ The Commission published a plan for review of rules issued by the agency in calendar years 1990, 1991, and 1992, which have, or might have, a significant economic impact on a substantial number of small entities.² The purpose of the review was to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of such rules upon a substantial number of small entities. The Commission requested comments from the public, and stated that all comments would be evaluated, and, if necessary, action taken to rescind or amend the Commission's rules, as required.³

In the NTCA comments filed in response to the Commission's public notice, you advocated a modification to the controlling interest standard, set forth in section 1.2110, to the extent that the standard required that the gross revenues of all officers and directors of rural telephone cooperatives would be attributed to an applicant that seeks to qualify for a bidding credit. Your comments suggest that this provision should not apply to cooperatives because "the outside interests of officers and directors of telephone cooperatives are not financial resources available to the cooperatives and an individual director cannot control the cooperative."⁴

Since the NTCA comments were filed, the Commission adopted the *Part 1 Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*,⁵ in which it, *inter alia*, adopted a narrow exemption from the attribution rule for the officers and directors of a rural telephone cooperatives pursuant to which the gross revenues of the affiliates of the cooperative's officers and directors are not attributed to the applicant.⁶ Specifically, the gross revenues of

¹ Comments of National Telecommunications Cooperative Association, dated November 8, 2002 ("NTCA Comments"), filed in response to "FCC Seeks Comment Regarding Possible Revision or Elimination of Rules under the Regulatory Flexibility Act, 5 U.S.C. § 610," *Public Notice*, 17 FCC Rcd 16562 (2002) ("*Section 610 Public Notice*").

² *See, generally, Section 610 Public Notice.*

³ *Id.* at 16562-63.

⁴ NTCA Comments at 5-6.

⁵ Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180 (2003) ("*Part 1 Reconsideration Order*").

⁶ *Part 1 Reconsideration Order*, 18 FCC Rcd at 10190-95 ¶¶ 15-20. *See* 47 C.F.R. § 1.2110(b)(3)(iii).

the affiliates of a cooperative's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets all of the following conditions: (1) the applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (2) the applicant (or the controlling interest) is a "rural telephone company" as defined by section 153(37) of the Communications Act, as amended;⁷ and (3) the applicant (or the controlling interest) is eligible for tax-exempt status under section 501(c)(12) of the Internal Revenue Code.⁸ The Commission further refined the exemption in January 2005 when, in the *Part 1 Second Order on Reconsideration of the Fifth Report and Order*,⁹ it revised the third element to allow a cooperative to demonstrate its tax-exempt status by showing that it adheres to the cooperative principles enumerated in *Puget Sound Plywood, Inc. v. Commissioner of Internal Revenue*.¹⁰ We note that NTCA participated both times in the proceeding in which the Commission adopted and refined the cooperative exemption to the officer and director attribution rule under the controlling interest standard.

Given that the Commission has adopted an exemption to the controlling interest standard for officers and directors of cooperatives along the lines that you advocated in your November 2002 comments, we find NTCA's comments filed in response to Commission's public notice seeking comment on the review of rules pursuant to Section 610 to now be moot. Therefore, we consider the matter to be closed.

Thank you for your interest in this matter.

Sincerely

Gary D. Michaels
Deputy Chief, Auction Spectrum and Access Division
Wireless Telecommunications Bureau

⁷ 47 U.S.C. § 153(37).

⁸ *Part 1 Reconsideration Order*, 18 FCC Rcd at 10191-92 ¶ 16.

⁹ Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd 1942 (2005).

¹⁰ *Puget Sound Plywood, Inc. v. Comm'r of the Internal Revenue Serv.*, 44 T.C. 305 (1965).